

1 UNITED STATES DISTRICT COURT
 2 EASTERN DISTRICT OF NEW YORK

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3 MARCOS A. HERRERA-AMADOR, 16-CV-5915 (NGG)
 4 Plaintiff, United States Courthouse
 Brooklyn, New York
 5 - versus - August 2, 2023
 9:30 a.m.
 6 CITY OF NEW YORK, ET AL.,
 7 Defendants.
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 9 TRANSCRIPT OF CIVIL CAUSE FOR TRIAL
 BEFORE THE HONORABLE NICHOLAS G. GARAUFI
 10 UNITED STATES SENIOR DISTRICT JUDGE
 BEFORE A JURY

11 APPEARANCES

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 25 produced by computer-aided transcription.

CHARGE CONFERENCE

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1 THE COURT: Yes. It should be what, not with okay.

2 MR. FRANCOLLA: Then in the full paragraph after the
3 four subsection, crimes.

4 THE COURT: It starts: The third and final point.

5 MR. FRANCOLLA: Yes. The third line towards the
6 middle it should be, rights of the person accused.

7 THE COURT: It's of the, yes, it's a typo.

8 MR. FRANCOLLA: Nothing else.

9 THE COURT: That's on page eight, nothing else.
10 Page nine.

11 MR. LUMER: Nothing for plaintiff.

12 MR. FRANCOLLA: Nor defendants.

13 THE COURT: Page ten.

14 MR. LUMER: One objection, your Honor.

15 THE COURT: Go ahead.

16 MR. LUMER: Under compensatory damages the third and
17 final paragraph is section B, refers to or provides for
18 nominal damages. Our view here is, in this case certain
19 things are undisputed. It's undisputed Mr. Herrera was
20 incarcerated as a result of the prosecution for a period of
21 time. Under current City of New York and battery of other
22 cases, I don't see how a jury can find that he was maliciously
23 prosecuted and suffered no injury.

24 MR. FRANCOLLA: I understand counsel's point. I
25 think I've certainly had cases where nominal damages have not

1 been included consistent with Kerman. But at least from our
2 perspective we don't consider Kerman to prohibit nominal
3 damages in a scenario like this. We read it a bit more
4 nuanced. We do think it is okay to have it remain.

5 THE COURT: Do you have a citation, we'll look at
6 it?

7 MR. LUMER: Kerman v. City of New York 374 F.3d, 93,
8 the pin cite is 124.

9 THE COURT: What would you prefer?

10 MR. LUMER: Just that there is no reference to
11 nominal damages. If they find liability, then some amount of
12 compensatory damages is required. If they don't find
13 liability, well, obviously nothing is required.

14 THE COURT: We'll take a look. Thank you.

15 MR. FRANCOLLA: We had no objections to this page.
16 I think I just noticed a couple of tense issues under the
17 paragraph under A.

18 THE COURT: Yes.

19 MR. FRANCOLLA: In the first line. It's as
20 plaintiffs are as opposed to plaintiff is.

21 THE COURT: Okay.

22 MR. FRANCOLLA: I think the same issue in the third
23 line into the fourth.

24 THE COURT: Okay. That's it?

25 MR. FRANCOLLA: That's it.

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

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3 16-CV-5915 (NGG)
4 MARCOS A. HERRERA-AMADOR, United States Courthouse
5 Plaintiff, Brooklyn, New York

6 - versus -

August 3, 2023
9:30 p.m.

7 CITY OF NEW YORK, ET AL.,

8 Defendants.

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11 UNITED STATES SENIOR DISTRICT JUDGE
BEFORE A JURY

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LINDA D. DANIELCZYK, RPR, CSR, CCR
Official Court Reporter

PROCEEDINGS

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1 (In open court; Jury not present.)

2 (All rise.)

3 THE COURTROOM DEPUTY: Case on for trial.

4 For the plaintiff, please state your appearance.

5 MR. LUMER: Michael Lumer for the plaintiff, Your
6 Honor. Good morning.

7 MS. GUZMAN: Good morning, Your Honor. Christine
8 Guzman for the plaintiff.

9 MR. GUZMAN: Good morning, Your Honor. Lauriano
10 Guzman for the plaintiff.

11 THE COURT: All right. And Mr. Herrera is here.

12 MR. FRANCOLLA: Good morning, Your Honor. Brian
13 Francolla for the defendants.

14 MS. SHERWOOD: Good morning, Your Honor. Mary
15 Sherwood for the defendants.

16 THE COURT: Good morning, everyone, please be
17 seated.

18 The jury's here. So we'll call in the jury.

19 Will the plaintiff just take the witness stand so we
20 can get going right away.

21 MR. GUZMAN: Should I take the podium?

22 THE COURT: Yes, would you.

23 And the interpreters are previously sworn.

24 THE INTERPRETER: Good morning, Your Honor.

25 THE COURT: We have the final jury charge. I have

1 the materials you sent last night, they're being incorporated
2 into the charge.

3 Also, the application of the plaintiff regarding the
4 nominal damages is granted, and so I'm not changing the
5 verdict sheet.

6 MR. FRANCOLLA: Thank you, Your Honor.

7 THE COURT: And you have your exception.

8 (Jury enters the courtroom.)

9 THE COURT: Everyone may be seated.

10 (The witness resumes the stand.)

11 (Continued on next page.)
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